

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON

2 FOR THE COUNTY OF MULTNOMAH

3 STATE OF OREGON,

Plaintiff,

4 v.

5 DEBBIE COLLEEN DEACH,

6 Defendant.

Case No. 0610-35931

**VICTIM'S SENTENCING
MEMORANDUM¹**

7 **INTRODUCTION**

8 Before the court for sentencing on one class C felony count of Criminal
9 Mistreatment in the First Degree and one class A misdemeanor count of Attempted
10 Criminal Mistreatment in the First Degree is 52 year-old Debra Colleen Deach, the
11 victim's former self-designated caregiver. The presumptive sentence on the
12 governing charge of Criminal Mistreatment in the First Degree based on the
13 stipulated Sentencing Guidelines grid block of 7-I is 36 months probation, with up to
14 90 days of jail.

15
16 ¹ "At the time of sentencing, the victim . . . has the right to appear personally or by
17 counsel, and has the right to reasonably express any views concerning the crime, the
18 person responsible, [and] the impact of the crime on the victim. . ." ORS 137.013. *See*
19 *also* Article I, Section 42 of the Oregon Constitution, which was passed by the
20 citizenry "to ensure crime victims a meaningful role in the criminal * * * justice
system[,]," and to "ensure that a fair balance is struck between the rights of crime
victims and the rights of criminal defendants * * * ." Or Const Art I, §42 (1).

1 The undersigned's understanding of the plea agreement between the
2 prosecutor and the defense is as follows:

3 36 months formal probation, with the following special conditions:

- 4 1. 0-60 days jail (defendant to argue for 0, prosecutor to recommend no
more than 60 days);
- 5 2. Financial Crimes Package;
- 6 3. Defendant to provide no care for elderly or dependent persons;
- 7 4. No entry into places where elderly or dependent persons live, except
defendant's current housing;
- 8 5. Drug evaluation and treatment per probation officer;
- 9 6. Other counseling per probation officer;
- 10 7. No contact with Hazel Zahnow;
- 11 8. \$5,000 compensatory fine to Hazel Zahnow (Beagle, Burke &
Associates, Conservator & Guardian, as payee), with posted bail to be
applied to compensatory fine, and the balance to be paid in monthly
installments in an amount to be set by the sentencing judge; and
- 12 9. Remaining fines and fees imposed and suspended.

13 The victim was consulted and supports the court's imposition of the agreed-
14 upon sentence, but urges the court to order the defendant to serve 60 days in jail,
15 with credit for time served, based on the facts of the defendant's crimes as
summarized below.

16 **THE VICTIM – HAZEL ZAHNOW**

17 Hazel Zahnow is now 94 years old. Not much is known about her history
18 because she is a poor historian due to her advanced dementia. It is known she has an
19 adopted son, Larry Birdtail, who lives in California and who has been ill with Lyme

1 Disease for approximately five years, preventing the annual visits he used to make to
2 see his mother. Larry's son (Mrs. Zahnow's grandson) lives locally, but does not
3 appear to spend time with or look out for his grandmother. Mrs. Zahnow's brother –
4 the last of her living contemporaries – died in 2001.

5 Mrs. Zahnow receives approximately \$1,300 per month in Social Security
6 benefits. She presently resides in an area memory care facility, the identification of
7 which has been kept from the defendant to prevent her from contacting Mrs.
8 Zahnow.

9 **BRIEF FACTUAL SUMMARY**

10 The investigation into the activity which led to the defendant's prosecution
11 began on April 8, 2006, when Portland Police responded to a complaint of suspicious
12 activity related to a motor home parked near Hazel Zahnow's residence at 5132 NE
13 60th Avenue in Portland, Oregon. Neighbors told the responding officer, Greg
14 Seamster, that they suspected drug activity in the motor home, as well as at Mrs.
15 Zahnow's house based on the activities of Mrs. Zahnow's caregiver, Debbie Deach,
16 and a group of about five others who appeared to have taken over the house and
17 were using it as a place to sell drugs. The neighbors provided Officer Seamster with
18 detailed information concerning the drug activities, including how the availability of
19 drugs was advertised by those who had taken over Mrs. Zahnow's home.

1 Officer Seamster contacted Mrs. Zahnow, who was then 93 years old, and
2 noted that she appeared frail and seemed to get confused very easily. Mrs. Zahnow
3 informed Officer Seamster that she believed she was being adequately cared for.
4 Nevertheless, concerned about the reported activity, Mrs. Zahnow's appearance, and
5 the fact that she had no access to a phone, Officer Seamster notified Aging Services
6 and other units within the Police Bureau.

7 On May 17, 2006, Officer Judy McFarlane of PPB's Elder Crime Unit and
8 Deputy District Attorney Greg Moawad, Multnomah County's Elder Crimes
9 prosecutor, conducted a home visit at Mrs. Zahnow's residence to check on her
10 welfare. When allowed inside by Mrs. Zahnow, they observed numerous Meals on
11 Wheels deliveries lying about, including some containing spoiled food; very little
12 other food available; piles of dirty dishes; a baby monitor in the kitchen; and a locked
13 padlock on the outside of what was later determined to be Debbie Deach's bedroom
14 door.

15 Defendant Debbie Deach joined Officer McFarlane and DDA Moawad shortly
16 after their arrival, accompanied by her boyfriend, Glen Charles Parker. Parker has
17 convictions for Delivery of a Controlled Substance II (1988), Possession of a
18 Controlled Substance II (1998 x 2), Felon in Possession of a Firearm (1998), DUII
19 (2002), and at the time had an open case charging him with Carrying a Concealed
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1 Weapon (Multnomah County Case No. 0606-47424) of which he has since been
2 convicted.² Deach told Officer McFarlane and DDA Moawad that she had previously
3 been Mrs. Zahnow's neighbor, and that even after moving away, continued to look
4 in on Mrs. Zahnow. Deach related that she had visited Zahnow approximately three
5 years prior at a nursing home where Zahnow had ended up after a fall. Deach stated
6 that Zahnow had wanted to go home, so Deach moved out of her house and moved
7 in with Zahnow to continue Zahnow's 24 hour care. When asked about Glen
8 Parker's presence, Deach told the law enforcements officers that Parker was
9 "moving."

10 Officer McFarlane observed that Deach appeared to be under the influence of
11 a controlled substance, and asked her to take a urine test. Deach initially agreed,
12 then when Officer McFarlane suggested they go do it, Deach refused, then admitting
13 she was on pain medication for back pain and that the medication was from an old
14 prescription belonging to someone else.

15 When asked what she did to assist Mrs. Zahnow, Deach responded that she
16 prepared meals, kept the house clean, made certain Zahnow took her medication,
17 and took Zahnow to doctor's appointments. Deach later said she also wrote checks
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19 ² Parker has also been charged and convicted of possessing methamphetamine since
20 Officer McFarlane's and DDA Moawad's May 2006 contact with him, with sentence

1 for Zahnow to sign, and volunteered that Zahnow paid about \$300 per month for
2 rent on Deach's son's residence. Deach then began telling Mrs. Zahnow that Officer
3 McFarlane and DDA Moawad were there to take her house away from her and put
4 her in a home because they did not think Deach was doing a good enough job taking
5 care of her. Deach said if that was the case, she would leave right now. When
6 Officer McFarlane suggested she do so, Deach refused, and told Officer McFarlane
7 she wanted an attorney.

8 With Mrs. Zahnow's permission, Officer McFarlane returned to take
9 photographs of the interior condition of the residence on May 24, 2006. Deach
10 answered the door and immediately became verbally combative with Officer
11 McFarlane, demanding her name and badge number, and yelling for Zahnow to tell
12 Officer McFarlane to leave – that the officer was there to take her home away and put
13 her in a nursing home. Deach then called 9-1-1 and gave the phone to Mrs. Zahnow,
14 ordering her to tell the person who answered the phone to send the police. Deach
15 then yelled out the door for Parker to come to her aid. Deach thereafter got on the
16 phone with the 9-1-1 dispatcher, and Officer McFarlane used the opportunity to
17 finish taking her photos, then left while Deach continued to speak with the
18 dispatcher.

19 _____
20 imposed by this court on December 5, 2006.

1 During her continuing investigation, Officer McFarlane confirmed that Mrs.
2 Zahnow had been paying the rent on Deach's son's residence "for years," and that
3 the rental agreement for the residence was actually in Deach's name, and Deach had
4 lived there until about 5-6 months earlier.

5 Officer McFarlane and Aging Services personnel also contacted Zahnow's
6 primary care physician, Michael Carroll, a short time later, and received a written
7 report dated May 19, 2006, which is attached hereto as Exhibit 1 and which states in
8 substance that Mrs. Zahnow was a serious fall risk who required supervision for all
9 activities. Further, that Mrs. Zahnow had problems with dementia, disorientation,
10 and confusion; had difficulty taking and managing medications; had had multiple
11 falls; and needed assistance completing basic daily living tasks. Ms. Johnson, the
12 masters-level PMG Care Manager for Dr. Carroll, further wrote that "Hazel could
13 not safely take care of herself and should not be left unattended."

14 McFarlane returned to the residence in July with Kevin Burke of Beagle, Burke
15 and Associates, the prospective guardian for Mrs. Zahnow, and found Mrs. Zahnow
16 alone, although Mrs. Zahnow reported that there were "a couple of men" asleep in
17 the upstairs bedroom, i.e. in Deach's room. However, McFarlane observed Deach's
18 bedroom to be padlocked from the outside. Two large packages of balloons lay on
19 the landing leading up to the bedroom, which Officer McFarlane associated with
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1 drug packaging activity based on her training and experience. The prospective
2 guardian, Kevin Burke, subsequently arranged for a memory care residence for Mrs.
3 Zahnow, and a petition for the appointment of a conservator and guardian was filed
4 August 10, 2006 (Multnomah County Case No. 0608-91182).

5 When the court-appointed Visitor, Catherine Garman, went to interview Mrs.
6 Zahnow on August 15, 2006, she found Deach present, along with a friend of
7 Deach's, Karla Swoboda, who identified herself as a nurse.

8 During her visit, Garman observed that Mrs. Zahnow had a hospital
9 identification bracelet on her wrist, but Mrs. Zahnow could not explain why. Deach
10 told Garman that Mrs. Zahnow had a "foot problem," and when Garman had Mrs.
11 Zahnow remove her socks, she found a feminine hygiene pad being used as a
12 dressing for a dime-sized ulcer on the bottom of Mrs. Zahnow's foot.

13 Officer McFarlane, who had accompanied Garman to conduct the home visit,
14 later learned that Swoboda's nursing licenses were inactive (since 1981), that she had
15 been the subject of disciplinary action by the Nursing Board, and that there was an
16 outstanding warrant for her arrest. Officer McFarlane arrested Swoboda, who was
17 caring for Mrs. Zahnow at the time, and when Deach (who was no longer present)
18 was contacted and informed that Swoboda had been arrested, she sent three others
19 in sequence to "assist" with Mrs. Zahnow's care. When each arrived, they were also
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1 found to have outstanding warrants, and all three were arrested. Mrs. Zahnow was
2 ultimately transported to Providence Hospital to ensure she was in a safe
3 environment until her placement in the community-based memory care facility the
4 following day.

5 Garman's report is attached hereto as Exhibit 2, and includes other
6 information about the conditions and circumstances in which she found Mrs.
7 Zahnow, as well as information about Deach's behavior during her visit.

8 Rebecca Fetters, an Associate Fiduciary employed by Beagle, Burke &
9 Associates, subsequently arranged for Mrs. Zahnow's home to be cleaned out and
10 oversaw efforts to organize and manage her financial situation. Ms. Fetters found
11 the house filthy, with roaches scurrying about and debris everywhere. Utility bills
12 were unpaid, and the City was assessing penalties for unpaid nuisance fines
13 involving complaints in 2005 and 2006 of an RV overtaken by homeless persons
14 parked in Zahnow's backyard, trash and debris, and raw garbage harboring rats.³

15 With regard to Mrs. Zahnow's financial condition at the time of Beagle, Burke
16 & Associates' appointment as her guardian and conservator, she had about \$2,200 in
17 a checking account, a reverse mortgage on her home with an outstanding balance of
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1 approximately \$111,000, and more than \$40,000 in consumer debt including eight
2 credit card accounts, virtually all of which was past-due, and most of which had been
3 placed with collection agencies. (Exhibit 3) Little of the \$40,000 in credit card
4 purchases appears to have benefited Mrs. Zahnow, and she reported to Ms. Fetters
5 that the cards were taken from her and used "by the people living in her home."
6 There were certainly no tangible assets among Mrs. Zahnow's possessions that
7 would account for the purchases made with the credit cards.

8 Additionally, documents showing payments for cell phone services were
9 located in Mrs. Zahnow's home, and since Mrs. Zahnow had no phone, it is apparent
10 these payments were for a phone used by Debbie Deach. Of the few cancelled checks
11 located in Mrs. Zahnow's home, most were dated between 2000 and 2003, and \$2,000
12 worth of those few checks were payments to Debbie Deach or her landlord.

13 The defendant took advantage of a lonely, elderly, and disabled⁴ woman. In
14 all likelihood, much of the financial abuse perpetrated by the defendant on Mrs.
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17 ³ The City of Portland eventually excused the nuisance fines and issued a refund of
18 fines previously paid based on the "well-documented fact that [Mrs. Zahnow] was a
victim of an Elder crime."

19 ⁴ Dr. Carroll's Care Manager wrote on May 19, 2006, "Hazel has dementia and has
20 periods of hallucinations, disorientation, and confusion." She scored zero on a Mini-
Mental-Status Exam administered on February 17, 2005.

1 Zahnow supported the defendant's and her associates' drug habits.⁵ Although there
2 are factors which would justify a departure sentence in this case, Beagle, Burke &
3 Associates supports the plea agreement entered into by the prosecution and defense
4 in order to prevent any further trauma to Mrs. Zahnow that might be caused by a
5 trial. However, Beagle, Burke and Associates urges the court to impose the full 60
6 days of jail time due to the length of the financial abuse and physical neglect
7 perpetrated by the defendant.

8 In summary, and for the reasons set forth herein, the conservator/guardian for
9 Mrs. Zahnow asks that the court impose the sentence set forth above, with 60 days
10 jail imposed as a condition of probation.

11 Dated: May 28, 2007.

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13 Erin K. Olson, OSB 93477

14 Attorney for Beagle, Burke & Associates

15 Conservator & Guardian of Hazel Zahnow

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18 ⁵ A neighbor interviewed by Officer McFarlane indicated that Glen Parker had at
19 one point asked to use a shredder to dispose of checks and credit cards in Mrs.
20 Zahnow's name. As the court is no doubt aware, identity theft is often associated
with drug abuse, and most often is associated with methamphetamine abuse.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on May 28, 2007, I served a true copy of the foregoing
3 document on counsel for the state and the defendant, as follows, by prepaid first-
4 class mail:

5 Gregory Moawad, DDA
6 Multnomah County District Attorney
7 1021 S.W. Fourth Avenue, Room 600
8 Portland, OR 97204

9 Kati Dunn-Elkins
10 Metropolitan Public Defenders
11 630 SW 5th Ave Ste 500
12 Portland OR 97204

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14 Erin K. Olson
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